

**UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.**

**Issued by the Department of Transportation  
on the 26th day of November, 1996**

**1996 U.S.-Japan All-Cargo Service Proceeding**

**Docket OST-96-1366**

**FINAL ORDER**

By this order, we confirm our show cause order that tentatively granted the application of Polar Air Cargo, Inc. ("Polar") to conduct scheduled all-cargo service between the U.S. and Japan and beyond to one point. We also confirm our tentative choice of Evergreen International Airlines, Inc. ("Evergreen") as the backup carrier.

**I. BACKGROUND**

Under the April 1996 United States-Japan Memorandum of Understanding ("1996 MOU"), the U.S. may designate one new carrier to provide scheduled all-cargo service over a U.S.-Japan-beyond routing. The new designated carrier must be a carrier that did not operate scheduled all-cargo or combination services between the United States and Japan as of the date of the signature of the 1996 MOU. The new U.S. carrier may not serve Tokyo, and will be limited to six weekly frequencies. Also, the selected carrier will receive no fifth-freedom rights and may serve the beyond point only on a blind-sector basis. On May 13, 1996, we issued Order 96-5-14, instituting the *1996 U.S.-Japan All-Cargo Service Proceeding* in Docket OST-96-1366 to select one primary carrier and one backup carrier to provide scheduled all-cargo service in the U.S.-Japan market.

By Order to Show Cause 96-8-43, served September 5, 1996, we tentatively decided to select Polar for scheduled all-cargo service between the U.S. and Japan and tentatively awarded back-up authority to Evergreen.

## **II. RESPONSIVE PLEADINGS**

Objections to our tentative findings and conclusions were filed by Evergreen and Gemini Air Cargo.<sup>1</sup> Answers were filed by Polar, Evergreen, Gemini, Rickenbacker International Airport (supporting Evergreen) and the City of Chicago (supporting Polar). Evergreen filed a reply to Polar's answer.<sup>2</sup>

### **A. Evergreen**

Evergreen argues that the Department's tentative decision to grant primary authority to Polar should be reversed for the following reasons: 1) choice of Polar will not serve the best interests of the shipping public of the United States; 2) the Department's failure to recognize the value arising from service to Komatsu and from Evergreen's Columbus regional hub; and 3) there is new evidence in the docket that DOT has not considered, and the facts in the docket deserve a thorough reconsideration.

Evergreen argues that when determining public interest, in light of the tightly restrictive nature of the U.S.-Japan market, the Department's decision determining the public interest must focus on which applicant will maximize market access opportunities for the most carriers and shippers, and which carrier will offer the best service to the public and the most competition for existing services in the market. Evergreen asserts that Polar's proposal is redundant airport-to airport service to a few major U.S. gateways that are already well served. Evergreen also argues that Polar's proposal is inconsistent with the needs of the shipping public and the Department's decisional criteria in this case to increase access to international aviation markets, particularly through cooperative arrangements. In contrast, Evergreen claims that its proposal, through its "partnerships" with four integrated cargo carriers, will open the Japanese market to five carriers, increase market competition, and-- by providing access to 118 U.S. cities-- best serve the needs of the shipping public. Evergreen further argues that it will carry more traffic than Polar.<sup>3</sup>

Evergreen also argues that DOT's comparative analysis of Evergreen's and Polar's service proposals in the major gateways markets improperly gives more weight to Polar's direct service and on-line connecting service than the Department gives to Evergreen's direct service and seamless connections to the major gateways through the Ohio hubs of Evergreen's four integrated cargo carrier partners. Evergreen further argues that, although flow and feed capacity were supposed to be a key consideration in the case, the Department paid little attention to the connections Evergreen offers with its partners. Evergreen contends that the Department mistakenly criticizes the intermodal aspect of its proposal rather than recognizing its strength and consistency with the national transportation plan.

Evergreen asserts that the Department's statement in the show cause order that Evergreen's service to the West Coast would require a "backhaul" of cargo to Columbus ignores the way a hub-and-spoke systems works and ignores the benefits and efficiencies

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<sup>1</sup> American International Airlines ("AIA") had participated as an applicant in the case but did not file any objections to the show cause order.

<sup>2</sup> Evergreen also accompanied its pleading with a motion for leave to file an otherwise unauthorized document. To ensure a complete record in this case, we will grant Evergreen's motion.

<sup>3</sup> See pages 12-13 *infra* for discussion on Evergreen's compliance with our evidence request.

derived from a hub-and-spoke networks. Evergreen argues that instead of focusing on how the cargo will move, the Department should focus on the overall time that cargo will spend in transit. In this regard, Evergreen includes as a new exhibit its comparison of Polar's and Evergreen's overall time in transit.<sup>4</sup> Based on this exhibit, Evergreen concludes that, through its connections to the integrated carriers' hubs in Ohio, Evergreen will provide to shippers on the West Coast and throughout the U.S. service that is comparable to or substantially better than Polar's proposed direct and on-line connecting service.

Evergreen asserts that any carrier chosen in this case will be dependent upon Tokyo traffic. Evergreen argues that the Department ignores the unique position of Komatsu to attract Tokyo traffic, and the other benefits of Komatsu as a Japan gateway, such as lower operational costs and the increased intergateway competition.

Evergreen also contends that the Department mistakenly concluded that Polar would be providing the only U.S.-flag scheduled all-cargo service to Korea. Evergreen points to the June edition of the OAG as listing two other U.S. carriers providing cargo service. Therefore, Evergreen argues the Department should review its determination of the benefits of Polar's proposal.

Finally, Evergreen argues that the new evidence submitted by Evergreen supports a reversal of the Department's show cause order and choice of Evergreen for award of primary authority.<sup>5</sup>

## **B. Gemini**

Gemini argues that the Department's reliance on behind-gateway feed to evaluate route proposals is misplaced, especially in light of the benefits of a new entrant to the competitive U.S.-Japan market. Gemini further asserts that Chicago is a proven origin-destination point for substantial U.S.-Japan cargo and that service to this sole point will enhance Gemini's chances of success by avoiding investment in assets necessary to build a network designed to feed less suitable origin points. Gemini criticizes the Department for giving favorable weight to Polar's network of international routes and its corresponding international service. Gemini argues that the Department's actions are at odds with the Department's policy goal of selecting new entrants wherever possible.

Gemini argues that its proposed service to Taipei beyond Osaka makes the best use of available rights and that the Department incorrectly gave insufficient weight to Gemini's choice of beyond point and its maximum use of the frequencies. Gemini also criticizes the Department for preferring applicants with large capacity B-747 aircraft and states that its choice of the DC-10-30 F aircraft makes more economic sense, as it is sized appropriately for growth in the market.

With regard to the proposals of the other applicants, Gemini argues that the irregularity of Polar's schedule, serving different cities with a different number of flights per week, will

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<sup>4</sup> This unauthorized submission was not accompanied by a motion or permitted in the procedures for this case. Because no party objected, and in fact some parties responded to it, the submission will not be struck in this proceeding. However, we do not expect such conduct to recur.

<sup>5</sup> Again no motion accompanied this "evidence."

interfere with the efficient and economic operation of the route and is inconsistent with the development and maintenance of a steady traffic flow. Gemini asserts that its proposal to fly Chicago-Anchorage-Osaka-Taiwan is the most advantageous to shippers because of its convenient and consistent schedule.

Gemini criticizes Evergreen's proposal as being a speculative and complex intermodal concept, which relies on the intermodal feed from four other carriers that have their hubs in Ohio, but with no certainty that this concept will prove economically feasible for Evergreen. Gemini also criticizes Evergreen's choice of Komatsu as its Japan destination as being equally speculative, inasmuch as it depends almost entirely upon traffic trucked from Tokyo and Osaka. In response to Evergreen's assertion that Federal policy favors promoting intermodal transportation, Gemini argues that reliance on intermodal transportation at both ends of the route is not a desirable alternative to the direct service proposed by Gemini.

### **C. Polar**

In response to the objections, Polar argues that Evergreen wants the Department to abandon long-established precedent and find that interline, change-of-gauge connecting service, such as that offered by Evergreen, is of more public value than the single-plane and single-carrier service proposed by Polar. Polar notes that, although Evergreen's four "partners" wrote letters in support of Evergreen's application, two of these same carriers, Burlington Express and Airborne Express, also wrote letters in support of Polar. Polar also notes that not one of Evergreen's partners intervened as a party, provided testimony in support of Evergreen, or filed an objection to the order to show cause in this proceeding. Polar argues that, based upon this apparent lack of support, Evergreen's "partnerships" commitments are suspect and should be considered as nothing more than the normal relationship between a carrier and large freight forwarders.

Polar then criticizes Evergreen's interline connections for not involving aircraft-to-aircraft connections at the same airport, but relying instead on intermediate trucking service of 62 to 135 miles from the four Ohio airports used by its four partners and Evergreen's Columbus gateway.

Polar rebuts Evergreen's new exhibit comparing the overall transit times of Evergreen and Polar by stating that this exhibit is contrary to evidence in the record submitted by Evergreen.<sup>6</sup> Polar cites an example of cargo moving from San Francisco to Komatsu via a DHL flight through Cincinnati to demonstrate alleged difficulties of Evergreen to meet connections in its proposed schedule and its stated transit time. Polar further argues that quoting elapsed time to Komatsu is meaningless unless that city is the ultimate destination. Polar also points to Evergreen's exhibits to assert that there is no air service to the four Ohio hubs of Evergreen's "partners" on Saturday night or early Sunday morning,<sup>7</sup> and Polar therefore concludes that Evergreen's westbound Sunday flight will not have sufficient traffic and will not be sustained.

Polar criticizes Evergreen's choice of Columbus as its gateway and the structure of Evergreen's service proposal, on the grounds that it ignores an important source of Japan traffic, the West Coast. Polar further cites Evergreen's exhibits as supporting Polar's choice of U.S. gateways, asserting that the eight cities Polar will serve account for almost

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<sup>6</sup> Polar Answer p. 7 citing EZ-201, p.2; EZ-202, p. 1; EZ-R-4, p. 18.

<sup>7</sup> *Id.* p. 8 citing EZ-R-3.

73% of all U.S. air imports from Japan and 84% of U.S. exports to Japan.<sup>8</sup> Polar also argues that, based on Evergreen's exhibits, Polar's three West Coast gateways account for almost 40% of the total U.S. air imports and over 43% of total U.S. air exports to Japan.<sup>9</sup>

Polar counters Evergreen's claim that Komatsu airport has lower operating costs by arguing that the difference between Komatsu and Osaka is only approximately \$1,400 per landing and that this is offset by the cost of an extra east-bound fuel stop made necessary because of Komatsu's short runway length.<sup>10</sup>

Polar criticizes Evergreen's traffic forecast, arguing that Evergreen did not comply with the Department's evidence request.<sup>11</sup> As a result, Polar argues that the Department should not rely upon or give any weight to Evergreen's unsubstantiated claim as to the amount of traffic that it will carry. Polar also asserts that Evergreen's projected load factors are substantially higher than Evergreen's actual load factors for transpacific services.

Polar rebuts Evergreen's argument that the Department was mistaken in finding that Polar would provide the only U.S.-flag scheduled all-cargo service to Korea by asserting that only two U.S. flag carriers, UPS and World, now operate cargo service into Korea. Polar argues that neither of these carriers provides traditional all-cargo lift: UPS is an integrated small package specialist and World operates through Asiana.

Finally, Polar argues that Gemini lacks the experience, reputation, and suitable equipment to start new scheduled services in the difficult U.S.-Japan market

#### **D. Rickenbacker International Airport**

Rickenbacker argues that the Department's tentative decision did not properly evaluate Evergreen's proposal under the criteria set forth in the instituting order. Rickenbacker contends that selection of Evergreen's proposal will promote intergateway competition by opening new gateways in both the U.S. and Japan. Rickenbacker also asserts that Evergreen's service with its partner carriers will provide service to 118 cities in the United States and result in service by five carriers to Japan. Rickenbacker argues that the Department's choice of Polar is the result of the Department's failure to recognize the important benefits of Evergreen's integrated intermodal service and the benefits of new service at a regional airport aggressively seeking to expand.

#### **E. Chicago**

Chicago states that it continues to support Polar for the newly available all-cargo frequencies to Japan. Chicago argues that only Polar has both a strong presence in the Chicago cargo market and has proposed to operate six weekly flights over Chicago as part of its service proposal. Chicago asserts that Evergreen's "new evidence" amounts to little more than additional letters of support and a reiteration of its earlier arguments. Chicago

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<sup>8</sup> *Id.* p. 11 citing EZ-303.

<sup>9</sup> *Id.* citing EZ-303, pp 1-4.

<sup>10</sup> *Id.* p. 13, citing PO-RT-2, pp. 3-4.

<sup>11</sup> With regard to Evergreen's other "new evidence," Polar argues that it is nothing more than additional carrier-generated support letters, many of which follow the same format almost verbatim, and are therefore, are of minimal probative value.

dismisses Gemini's application as a non-operating startup carrier.<sup>12</sup> Chicago contends that Polar has a well-established reputation for quickly entering new markets and not only providing service to satisfy existing demand, but also stimulating additional cargo demand through its competitive rates and convenient schedules. Finally, Chicago argues that Polar has the proven ability to enter new markets and remain in those markets in the face of intense competition from both foreign and domestic air carriers.

### **III. DECISION**

After consideration of all the pleadings in this matter, we have decided to finalize our tentative findings and conclusions in Order 96-8-43 and to select Polar as the primary carrier and Evergreen as the backup carrier to provide scheduled all-cargo service between the U.S. and Japan.<sup>13</sup>

#### **A. Primary Authority**

This proceeding presents the Department with the opportunity to authorize a new carrier for additional scheduled all-cargo services for the U.S.-Japan market. The Japan market is the largest market for U.S. goods and services in Asia. However, under the terms of the U.S.-Japan aviation agreement, opportunities for increased designations and frequency levels remain constrained. The restrictive nature of the U.S.-Japan bilateral aviation relationship serves to emphasize the importance of ensuring that the carrier chosen in this proceeding will provide the maximum public benefits from the services provided.

In our show cause order, we tentatively concluded that the public interest is best served by selecting Polar's proposal. Polar offers the most effective use of the valuable U.S.-Japan all-cargo rights: use of a large capacity, wide-bodied aircraft on a maximum number of frequencies, the best service for the shipping public, the carrier's ability to flow freight to and from points behind its proposed gateway, the positive effect of the proposal on competition in the U.S.-Japan market, and the benefits of route integration. The other parties in this proceeding have presented no arguments that persuade us to change our findings.

Polar and Evergreen are the only two applicants to propose using all six frequencies with large capacity, wide-bodied B-747 aircraft.<sup>14</sup> We are not persuaded by Gemini's argument that we did not give sufficient consideration to the benefits of its proposal using DC-10-30 aircraft. In a large cargo market with limited entry and restricted frequencies such as Japan, it is particularly important to maximize use of our limited rights.<sup>15</sup> The capacity of

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<sup>12</sup> In Order 96-10-47, served on November 6, 1996, the Department awarded Gemini a certificate of public convenience and necessity to conduct foreign scheduled operations.

<sup>13</sup> Based on the data officially noticeable under Rule 34(n), we find that both carriers are fit, willing, and able to provide the transportation services proposed. Both Polar and Evergreen have previously been found to be citizens of the United States and fit to provide scheduled foreign air transportation of persons, property, and mail. See Order 96-6-12 for Polar and Order 93-1-13 for Evergreen).

<sup>14</sup> AIA also proposed using B-747 aircraft. However, AIA proposed initially using only three frequencies to Japan, with the possibility of using all six frequencies after six months. AIA did not file an objection to the show cause order.

<sup>15</sup> Gemini argues that the DC-10-30 aircraft is appropriately sized for growth in the market. However, Japan is the largest trading partner of the U.S. in Asia. For 1994, U.S. air freight

*Footnote Continued .*

the cargo service proposed by Polar and Evergreen will ensure the optimal use of our bilateral aviation rights by providing the most capacity within the frequency limitations.

Polar will provide direct and on-line connecting service to and from eight U.S. cities; more direct service than any other carrier. These eight cities account for 73% of all U.S. air imports from Japan and 84% of its exports.<sup>16</sup> Polar will serve the four top U.S.-Japan cargo markets -- New York, Chicago, Los Angeles, and San Francisco -- a minimum of four times a week, with New York and Chicago receiving service on all six frequencies.<sup>17</sup> This level of service to the major U.S.-Japan markets will enable Polar to develop a steady traffic flow and provide substantial public benefits to U.S. shippers and consignees.

Gemini has argued that the Department's emphasis on behind-gateway feed is misplaced in light of the benefits of a new entrant to the market. We disagree. Although the Department has traditionally encouraged new entrant carriers, we have done so in light of our overall evaluation of those carriers' proposals in terms of the facts and circumstances of the particular case. In this case, a carrier's ability to feed and flow cargo traffic behind the gateway was specifically listed as a criterion by which the Department would evaluate carrier proposals. The record shows that Polar's proposed direct and connecting service to eight U.S. cities, including the top four U.S.-Japan markets, is superior to Gemini's service to one gateway, Chicago, without any behind-gateway feed.

Evergreen has argued that the Department improperly gave excess weight to Polar's direct and on-line service and did not give proper consideration to Evergreen's direct service and seamless connections with its four integrated cargo carrier partners. Evergreen further argues that we ignored the intermodal aspect of the national transportation policy. Again, we disagree. Evergreen itself will offer direct and connecting service to 3 cities, Columbus, New York and Chicago.<sup>18</sup> It is only through its "arrangements" with the four integrated carriers that service will be provided to the remaining 115 cities that Evergreen proposes to serve. Evergreen points to the *U.S.-Brazil All-Cargo Case* as indicative of the Department's previous support for a carrier's proposal involving an intermodal hub. However, unlike AIA in that case, Evergreen in this instance will not be providing intermodal freight services through its family of affiliates and subsidiaries.

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*Footnote Continues*

exports to Japan were 613,440,903 pounds annually and U.S. air freight imports from Japan were 388,429,313 pounds annually. (EZ 303, pp. 1, 4).

<sup>16</sup> EZ-303.

<sup>17</sup> Gemini asserts that Polar's service schedule is irregular and that this irregularity will interfere with the efficient and economic operations and is inconsistent with the development and maintenance of steady traffic flow. We disagree. Polar's exhibits show that Chicago and New York will be served six times a week in both directions; Los Angeles will be served five times a week westbound and six times a week eastbound; San Francisco will be served four times a week westbound and six times a week eastbound; and Seattle will be served four times a week in both directions. (PO-103). We believe that shippers will find this level of service to be consistent and compatible with developing a steady traffic flow.

<sup>18</sup> Evergreen itself will serve Columbus directly on all six frequencies, and Chicago by direct service once a week. New York will be served directly by one flight a week and by three weekly connecting flights from Columbus. (EZ-200).

Polar has argued that Evergreen's relationships with its "partners" are nothing more than the relationships that any carrier has with big freight forwarders. On the other hand, Evergreen claims that its proposal, including the timing of flights to provide seamless connections, is the result of close coordination with each of its four "partners." Evergreen points to the letters of support from the four carriers and a signed letter of intent from one carrier as indicative of a close relationship between Evergreen and each of these carriers.

The record does contain letters of support for Evergreen from DHL, Emery Worldwide, Airborne Express, and Burlington Air Express. However, two of these same carriers, Airborne Express and Burlington Air Express, have also submitted letters in support of Polar. On the issue of support for Evergreen's proposal, Burlington Air Express in its letter to Polar states that "we frankly have not evaluated their [Evergreen's] proposal."<sup>19</sup> After noting that AIA was also an applicant in the case, Burlington's Vice President states "in good corporate fashion, I wish you all well in the case."<sup>20</sup> Finally, Burlington's Vice President goes on to say that Burlington's decision to go with either Evergreen at Columbus or Polar at Chicago becomes one of reliable and economic service, not location.<sup>21</sup> In addition, none of the four "partners" engaged in any action that would indicate a vested interest in the outcome of this case: none intervened as a party in the case; made a firm commitment for blocked space; submitted any supporting evidence other than general supporting letters; or filed objections to the show cause order. As a result, there is nothing to indicate that any of these carriers have a special relationship with Evergreen.

Furthermore, even if such relationships did exist between Evergreen and the four integrated carriers, we still believe that Polar's direct and connecting service will provide more public benefits than Evergreen's proposal. Polar maintains a uniform fleet of B-747 aircraft. Thus, once cargo is configured at one of its eight gateways, it does not need to be broken down or reconfigured until it arrives at Osaka. Cargo can be transloaded at Anchorage without additional processing. In contrast, Evergreen's Columbus hub will operate as a "hub for hubs" which will entail cargo being trucked or flown into one of the partner's hubs, processed for handling, trucked a distance of between 62 and 135 miles to Evergreen's hub, and then reconfigured for carriage on an Evergreen B-747 aircraft.<sup>22</sup>

Additionally, Polar will provide substantial service to three major West Coast gateways. These gateways account for almost 40% of total U.S. air imports and over 43% of total U.S. air exports to Japan.<sup>23</sup> In our order to show cause, we tentatively found Polar's proposal of direct service to the West Coast to be superior to the connecting service of Evergreen. Evergreen disputes the Department's characterization of its service from the West Coast as entailing a "backhaul" to Columbus. Evergreen has argued that the Department should focus on the overall elapsed time in transit rather than how the cargo will move. However, rather than go through time-consuming and expensive double processing, we find that in this case it is much more likely that this cargo originating on the West Coast will move on readily available airlift from the various West Coast gateways.<sup>24</sup>

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<sup>19</sup> PO-R-501.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> Polar Answer p. 3.

<sup>23</sup> EZ 303, p. 1-4.

<sup>24</sup> PO-R-103.



Moreover, we note that Evergreen's new exhibit comparing overall elapsed time in transit for Polar and Evergreen<sup>25</sup> only analyzes the time in transit to each carrier's Japan gateway. Polar has argued, and we agree, that this comparison is meaningless unless the ultimate destination of the cargo is Komatsu. Evergreen specifically states that it expects 80% of its traffic to have a Tokyo origin or destination and 20% to have an Osaka origin or destination.<sup>26</sup> Each of these destinations by Evergreen's exhibits would take at least four additional hours (Komatsu-Tokyo, six hours, Komatsu-Osaka, four hours).<sup>27</sup> On the other hand, Polar's exhibits show that it anticipates 71% of its traffic to have an origin or destination of Osaka/Nagoya while only 29% would originate in or have a destination of Tokyo or other markets.<sup>28</sup> As a result, we are not persuaded that the overall elapsed time of Evergreen's service is superior to that of Polar.

Furthermore, we are not persuaded by Evergreen's argument that the carrier chosen in this case will necessarily be dependent upon Tokyo traffic, and that as a consequence the Department should choose Evergreen because of its ability to attract Tokyo traffic. Polar's chosen gateway, Osaka, is the second- largest market in Japan. The evidence in the record indicates that it is a market experiencing tremendous growth. In 1994, Osaka had a 7% market share of overall cargo tonnage from Japan to the U.S., but in 1995 this share had increased to 16.2%, and it is estimated that in 1997 this share will rise to 19.0%.<sup>29</sup> The estimated 1997 cargo traffic for Osaka alone is 188,091,800 pounds of U.S. exports to Osaka and 115,941,100 pounds of imports to the U.S. from Osaka.<sup>30</sup> Based upon this evidence, we find that the record indicates that the Osaka market is growing and expanding and that new service to this gateway will not only meet existing demand, but will also serve to stimulate further consumer demand.<sup>31</sup>

Evergreen argues that because the June edition of the OAG lists two other U.S. carriers as providing cargo service to Korea, the Department should reconsider benefits that it credited to Polar for being the only U.S. flag all-cargo carrier in the Korean market. We note that Korea is an open market in terms of designations, and therefore, carriers may choose to enter or leave the market on the basis of their economic assessment of the market. Thus, we recognize that the situation with Korea is fluid and other carriers may also enter the market. We note, however, that while other U.S.-flag all-cargo carriers may be serving the market, Polar's general all-cargo service can still offer real benefits. After Japan, Korea is our largest trading partner in Asia. The addition of the Korea blind sector beyond service will supplement Polar's existing Korea operations, provide significant benefits to U.S. shippers, and further promote U.S. flag presence in this important market.

Gemini argues that its six proposed beyond-Japan frequencies to Taipei, Taiwan, will maximize use of the beyond frequencies. However, the Taiwan market is smaller than the Korean market and already receives substantial service.<sup>32</sup> Evergreen has proposed to

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<sup>25</sup> Evergreen Objection Exhibit 2.

<sup>26</sup> Objection p.16-17, fn. 7.

<sup>27</sup> EZ-105.

<sup>28</sup> PO-305-308.

<sup>29</sup> PO-315.

<sup>30</sup> PO-305-308.

<sup>31</sup> In addition to Osaka cargo, Polar will also be able to draw on Tokyo O&D traffic.PO-308.

<sup>32</sup> EZ-R-10, October Oag Air Cargo Guide.

serve Hong Kong once a week. The Hong Kong market is also smaller than the Korean market with more cargo service.<sup>33</sup> Moreover, as we stated in our show- cause order, the valuable nature of the limited U.S.-Japan route rights service to a blind- sector beyond point would be considered as "supplemental and secondary to a carrier's primary U.S.-Japan route proposal."<sup>34</sup> Therefore, we find that Polar's service to Korea will provide greater public benefits than Evergreen's proposed service to Hong Kong or Gemini's proposed service to Taipei. We confirm our tentative decision that Polar's three weekly beyond Japan service to Seoul, Korea, enhances its superior U.S.-Japan service proposal.

Gemini also asserts that the favorable weight given by the Department to Polar's network of international routes is at odds with the Department's policy of encouraging new carrier entrants. We disagree. Although we tentatively found that Polar's ability to integrate its U.S.-Japan proposal with its other international routes would certainly provide public benefits, our decision to choose Polar was based upon the strength of its Japan service proposal.

On the issue of evidence, we are concerned by the disregard by parties in this case of our evidence rules. Section B of our instituting order specifically states that:

[s]ubmissions should contain specific factual information so that further clarification is unnecessary. The *sources and methodology used for all traffic estimates* and adjustments to the Department's traffic data should be clearly explained.  
(Emphasis added).

Both Evergreen and Gemini failed to adhere to our requirements. Evergreen submitted only one traffic forecast exhibit (EZ-301), a two page exhibit showing eastbound and westbound traffic projections of the estimated tonnage that Evergreen projected to carry on various segments of its proposed routing. There was no documentation or exhibits indicating how Evergreen arrived at these estimates, what assumptions it used, or if it used the Department's traffic data as its starting traffic base.<sup>35</sup> Gemini did not file any traffic forecast. We have in this case and will in the future not consider evidence submitted in this manner.<sup>36</sup> Failure to supply information at all, of course, will affect the consideration given a proposal. Evergreen's other "new evidence" consists of additional letters of support from congressional, civic, and business leaders. Evergreen did not accompany this submission with a motion for leave to file an unauthorized document. Although the other parties did not object to its consideration, this support does not persuade us to change our overall evaluation of the public benefits of Polar's proposal when compared with that of Evergreen. We continue to believe that Polar's proposal will provide superior benefits to more U.S. shippers and consumers.

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<sup>33</sup> EZ-R-10, October OAG Air Cargo Guide

<sup>34</sup> Order to Show Cause p. 8, fn. 29.

<sup>35</sup> Although the Department does not find that Evergreen's lack of specificity in its traffic forecasts constitutes an intentional violation of the evidence request, because we cannot make an independent judgment as to the accuracy of its traffic forecasts, we have not considered Exhibit EZ 301 in making our determination.

<sup>36</sup> The Department has recently confirmed its long held policy of disregarding non-conforming evidence. See, e.g., Order 96-4-48, p. 9; Order 96-6-53, p. 7-8. We will require carriers in future cases to ensure full compliance with evidence requests.

## **B. Backup Award**

We have decided to confirm our selection of Evergreen as backup carrier in this proceeding. Although we remain convinced that Polar's proposal offers the most public benefits, the record supports a conclusion that a backup award to Evergreen, if activated, would produce significant public benefits as well. As we noted above, only Evergreen along with Polar proposes to use large capacity wide-bodied aircraft ensuring the maximum use of the limited frequencies available. Even though we found that Polar's direct and connecting service was superior, Evergreen's proposal to serve 118 U.S. cities through its partnership arrangements would provide access for a substantial number of shippers and consignees. On the other hand, Gemini has proposed no behind-gateway feed and only proposes to serve Chicago. In addition, Evergreen's experience as a wet-lease and charter operator has given it a market presence and name recognition in the U.S.-Japan market, which should be beneficial in the event that Evergreen's backup authority is activated.

## **IV. CONCLUSION**

For the reasons listed above, we award Polar primary authority for the U.S.-Japan route for all-cargo services, and Evergreen backup authority. We will require Polar Air Cargo, Inc. to begin service within 90 days of issuance of this order.

### **ACCORDINGLY,**

1. We make final our tentative conclusions in Order 96-8-43;
2. We select Polar Air Cargo, Inc. for award of primary authority to engage in foreign scheduled all-cargo transportation between the United States and Japan and beyond, as described in this order, and issue to it a certificate of public convenience and necessity in the form attached;
3. We select Evergreen International Airlines, Inc. for award of backup authority to engage in foreign scheduled all-cargo transportation between the United States and Japan and beyond, as described in this order, and issue to it a certificate of public convenience and necessity in the form attached;
4. Unless disapproved by the President of the United States under 49 U.S.C. 41307, this order and the attached certificates shall become effective on the 61st day after its submission for section 41307 review or upon the date of receipt of advice from the President or his designee under Executive Order 12597 and implementing regulations that the President does not intend to disapprove the Department's order under that section, whichever occurs earlier;<sup>37</sup>
5. We grant the motion of Evergreen for leave to file an otherwise unauthorized document;
6. To the extent not granted, we deny all other requests in this proceeding; and

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<sup>37</sup> This order was submitted for section 41307 review on November 18, 1996. On November 26, 1996 we received notification that the President's designee, under Executive Order 12597 and implementing regulations, did not intend to disapprove the Department's order.

7. We shall serve this order on all parties in Docket OST-96-1366 and the Ambassador of Japan in Washington, D.C., the Ambassador of Korea in Washington, D.C., the Federal Aviation Administration, and the U.S. Department of State (Office of Aviation Negotiations).

By:

**PATRICK V. MURPHY**  
Deputy Secretary for Aviation  
and International Affairs

(SEAL)